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PTO/SB/21 (04-04)

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/038,062
	Filing Date	January 4, 2002
	First Named Inventor	Stephen A. Milks
	Art Unit	3746
	Examiner Name	Charles G. Freay
Total Number of Pages in This Submission	Attorney Docket Number	8416-000008

**ENCLOSURES (check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<b>Remarks</b>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	W.R. Duke Taylor	Reg. No.	31,306
Signature					
Date	January 4, 2006				

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	W.R. Duke Taylor	Express Mail Label No.	EV 717 344 242 US (1/4/2006)
Signature		Date	January 4, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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EV 717 344 242 US



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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250

## Complete if Known

Application Number 10/038,062  
Filing Date January 4, 2002  
First Named Inventor Stephen A. Milks  
Examiner Name Charles G. Freay  
Art Unit 3746  
Attorney Docket No. 8416-000008

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money ☐ Other ☐ None  
Order

☒ Deposit Account:

Deposit  
Account  
Number

08-0750

Deposit  
Account  
Name

Harness, Dickey & Pierce, PLC

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments  
☒ Charge any additional fee(s) or any underpayment of fees under 37 CFR 1.16 and 1.17  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$) 0

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims  -20 \*\* =  0 X  =  0  
Independent Claims  -3 \*\* =  0 X  =  0  
Multiple Dependent  X  =  0

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	** Reissue independent claims over original patent
1205	50	2205	25	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1590	2254	795	Extension for reply within fourth month	
1255	2160	2255	1080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	250
1403	1000	2403	500	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1500	2453	750	Petition to revive - unintentional	
1501	1400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1503	1100	2503	550	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 250

## SUBMITTED BY

Name (Print/Type)

W.R. Duke Taylor

Registration No. (Attorney/Agent)

31,306

Telephone

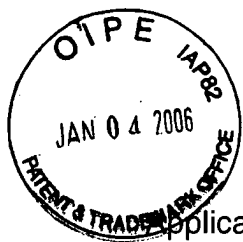
(248) 641-1600

Signature

W.R. Duke Taylor

Date

January 4, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/038,062  
Filing Date: January 4, 2002  
Applicant: Stephen A. Milks  
Group Art Unit: 3746  
Examiner: Charles G. Freay  
Title: AIR CIRCULATION DEVICE  
Attorney Docket: 8416-000008

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Mail Stop Appeal Brief – Patents  
Director of the U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**APPEAL BRIEF**

Dear Sir:

This is an appeal from the June 2, 2005 final rejection of Claims 1, 2, 5, 7, 8, 10, 11, 13-16 and 19 of the above-identified application. No claims have been allowed. Claims 9 and 18 are objected to. A copy of the Examiner's Final Office Action dated June 2, 2005 is attached in the Evidence Appendix at Exhibit A.

**REAL PARTY IN INTEREST**

Fan-Tastic Vent Corp. is the real party in interest, being the assignee of the present application.

## **RELATED APPEALS AND INTERFERENCES**

To the best of Applicant's knowledge, no other appeals, interferences, or judicial proceedings known to Appellant, Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the present pending appeal.

## **STATUS OF THE CLAIMS**

Claims 1, 2, 5, 7-11, 13-16, 18 and 19 stands rejected. Claims 9 and 18 stand objected to. Claims 3, 4, 6, 12 and 17 have been cancelled. Claims 1, 2, 5, 7-11, 13-16, 18 and 19 are being appealed and are attached in the Claims Appendix.

## **STATUS OF THE AMENDMENTS**

No amendments have been filed subsequent to the issuing of the final rejection.

## **SUMMARY OF THE CLAIMED SUBJECT MATTER**

Independent Claim 1 relates to an air circulating device 10 which contains a front face 20, a main base 30, and a rear face 40. ¶15, lines 1-2 (Fig. 1). A thin, low profile motor 80 and a fan blade 260 are within the housing assembly. ¶15, lines 9 and 10 and ¶18, lines 1-3. A rigid casing seals the motor 80 and the associated motor bearings creating a liquid, impermeable seal which enables the air circulation device to be subjected to liquid for cleaning the fan blades 260 while preventing corrosion and damage due to the liquid. The casing 80 covers the motor and has thickness of about 1" to provide a low profile motor assembly. ¶19, lines 1-11, ¶27, lines 1-7, ¶28, lines 13-15 (see Figs. 1 and 3).

Independent Claim 10 defines an air circulation device with a housing assembly and a front face portion 20, a main base portion 30 and a rear face portion 40. ¶15, lines 1-2. The base portion has a motor 80 and a fan blade 260. The bottom face of the main base includes one elongated support member 250 secured to the bottom face by a fastening member. ¶23, lines 1-2 (Fig. 5). The elongated support 250 is pivotally disposed about fastening member and manually positioned in an extended position, a contracted position, or any desired intermediary position between the extended and contracted positions to support the air circulation device in a number of different elongated support member positions. ¶24, lines 5-8 (See, Fig. 5)

#### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Applicant presents the following grounds of rejection:

1. Whether or not Claims 1, 5, 7, 8, 10, 13-16 and 19 are unpatentable under 35 U.S.C. §103(a) over Raab et al. (U.S. Patent No. 5,232,090 which is attached in the Evidence Appendix at Tab B) in view of Fujisaki et al. (U.S. Patent No. 4,684,839 which is attached in the Evidence Appendix at Tab C).
2. Whether or not Claims 2 and 11 are unpatentable under 35 U.S.C. §103(a) over Raab et al. in view of Fujisaki et al. further in view of Hung (U.S. Patent No. 5,839,205 which is attached in the Evidence Appendix at Tab D).
3. Whether or not Claims 10 and 19 are unpatentable under 35 U.S.C. §103(a) over Raab et al.
4. Whether or not Claim 11 is unpatentable under 35 U.S.C. §103(a) over Raab et al. further in view of Hung.

## **ARGUMENT**

### **REJECTION UNDER 35 U.S.C. §103(a)**

#### **Rejection of Claims 1, 5, 7, 8, 10, 13-16, and 19 by Raab et al. in view of Fujisaki et al.**

The Examiner has rejected Claims 1, 5, 7, 8, 10, 13-16 and 19 under 35 U.S.C. 103(a) as being unpatentable over Raab et al. in view of Fujisaki et al. The Examiner alleges that this combination renders Applicant's invention obvious to those skilled in the art.

Independent Claim 1, among other elements, includes a rigid casing sealing the motor and associated motor bearings creating a liquid impermeable seal enabling the air circulating device to be subjected to liquids to clean the fan blade while preventing corrosion and damage due to the liquid. The casing covering and the motor also have a thickness of around 1" to provide a low profile motor assembly.

The Raab et al. reference cited by the Examiner illustrates a box fan. Raab et al. discloses, as well as claims, a fan which includes feet with a resilient mechanism or spring to urge the feet from a retracted position, stored in the shipping container, to an extended position when the fan is pulled out of its shipping container. Raab et al. neither discloses nor suggests a liquid impermeable seal enabling the air circulation device to be subjected to liquids or a motor having a thickness of around 1" to provide a low profile motor assembly. In fact, Raab et al. only makes mention of the motor once in Column 2, line 21. Clearly the reference neither enables nor describes Applicant's claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.

The Examiner then combines Raab et al. with Fujisaki et al. The Examiner alleges that Fujisaki et al. illustrates a labyrinth seal sealing the shaft. The Fujisaki et al. reference makes reference at column 9, lines 6-15, to a bearing to which the shaft is passed. There is no mention or disclosure of any type of seal. In fact, Fujisaki et al. fails to even mention the term “seal” anywhere in its disclosure. The Examiner has clearly fabricated any type of seal teaching of Fujisaki et al. The Examiner cannot randomly and arbitrarily create features which do not exist in the reference. The Examiner cannot pontificate that something exists when it does not. Fujisaki et al. teaches no seal, and further no labyrinth seal. Accordingly, the Examiner has failed to proffer a combination which would render Applicant’s invention obvious to one skilled in the art. The Examiner, with his references, has failed to establish a prima facie case of obviousness and accordingly, the Examiner’s rejection cannot stand.

**Rejection of Claims 2 and 11 over Raab et al. and Fujisaki et al. and further in view of Hung**

The Examiner has rejected Claims 2 and 11 in view of the above references to Raab et al. and Fujisaki et al. further in view of Hung. The Examiner had previously relied on the Hung reference to show a low profile motor as well as a sealed motor. It was pointed out in previous amendments that this was not the case. Accordingly, the Examiner withdrew his rejection in view of Hung. Now the Examiner brings back the Hung reference. The Hung reference fails to overcome the deficiency of the above Raab et al. and Fujisaki et al. references. In order to combine the Hung reference with the Raab et al. and Fujisaki et al. references, the Examiner is applying hindsight reconstruction. There is no reason to combine Hung as suggested by the Examiner. Accordingly, Applicant believes Claims 2 and 11 to be patentably distinct over this combination.

### **Rejection of Claim 10 over Raab et al. and Fujisaki et al.**

Independent Claim 10 relates to an air circulation device with at least one elongated support secured to the body face by a fastening member. The elongated support is pivotally disposed about the fastening member and manually positioned in an extended position, a contracted position or any desired intermediate position between the extended and contracted positions to support the air circulating device.

The Examiner alleges that the Raab and Fujisaki et al. references disclose Applicant's invention. The Examiner takes it one step further and states in his January 13, 2005 Office Action on page 4:

With regards to claim 10, 13-16 and 19 the examiner notes that it would have been obvious to remove the spring drive for the support members and to have the rotation of the members performed manually. Such an arrangement would reduce parts and simplify the devise.

By following the Examiner's suggestion, the Raab et al. reference would be rendered inoperative. By removing the spring from Raab et al., it would render Raab et al. inoperable for its intended purpose. The Raab et al. reference, without its spring, would no longer enable the legs of Raab et al. to pivot upon removal from its shipping container as disclosed and claimed. To render the reference inoperable for its intended purpose, the Examiner has destroyed the teaching of the Raab et al. reference. The combination of Raab et al. with Fujisaki et al. likewise fails to disclose or suggest Applicant's invention. Fujisaki et al. neither discloses nor suggest any legs whatsoever on its device. Accordingly, this combination would fail to render Applicant's invention obvious to one skilled in the art.

### **Rejection of Claims 10 and 19 as being unpatentable over Raab et al.**

As mentioned above, the utilization of the Raab et al. reference would render it

inoperable for its intended purpose. Clearly, the Examiner cannot apply a reference where the intended purpose of the reference would be negated or destroyed by the Examiner's stripping away elements of the invention. Accordingly, Applicant believes the claims to be patentably distinct over the Raab et al. reference.

**Rejection of Claims 11 as being unpatentable over Raab et al. in view of Hung**

As pointed out above, the Raab et al. reference fails to disclose or suggest Applicant's invention. The combination with Hung as pointed out previously would likewise fail to disclose or suggest Applicant's invention. Accordingly, Applicant believes Claim 11 to be patentably distinct over the art cited by the Examiner.

**CONCLUSION**

Applicants respectfully submit that the Examiner's combination of Raab et al. and Fujisaki et al. or Raab et al. by itself prove a prima facie of obviousness under 35 U.S.C. §103(a). Accordingly, Applicants respectfully request reversal of the final rejection of claims 1, 2, 5, 7, 8, 10, 13-16 and 19 and allowance of these claims.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

Dated: January 4, 2006

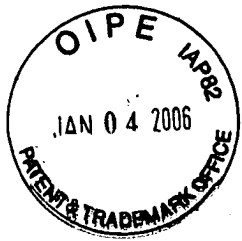
By: 

W. R. Duke Taylor  
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Bloomfield Hills, MI 48303  
(248) 641-1600

Attorney Docket No. 8416-000008

Enclosures



## CLAIMS ON APPEAL

1. An air circulation device comprising:  
a housing assembly having a front face portion, a main base portion, and a rear face portion, the base portion having a thin low profile motor and a fan blade;  
a rigid casing sealing the motor and associated motor bearings creating a liquid impermeable seal enabling said air circulation device to be subjected to liquids for cleaning said fan blades while preventing corrosion and damage due to the liquid and said casing covering said motor having a thickness around one inch to provide a low profile motor assembly.
2. The air circulation device of Claim 1, wherein the motor is powered by 12-volt direct current.
3. (Cancelled)
4. (Cancelled)
5. The air circulation device of Claim 1, wherein the casing is made of a rigid, non-corrosive material such that it is able to withstand external forces and pressures such as those exerted by the application of highly pressurized liquids.
6. (Cancelled)

7. The air circulation device of Claim 1, wherein the base portion contains at least one elongated support portion.

8. The air circulation device of Claim 7, wherein the elongated support portion is capable of being pivotally disposed in an extended position, a contracted position, or any desired intermediary position.

9. The air circulation device of Claim 8, wherein the elongated support portion is secured into the extended position through the cooperation of a knob, disposed upon the elongated support portion, and a dimple, formed in the bottom face of the main base.

10. An air circulation device comprising:  
a housing assembly having a front face portion, a main base portion, and a rear face portion, the base portion having a motor and a fan blade;  
wherein a bottom face of the main base portion includes at least one elongated support member secured to said bottom face by a fastening member; and  
wherein the elongated support portion is pivotally disposed about said fastening member and manually positioned in an extended position, a contracted position, or any desired intermediary position between the extended and contracted position for supporting the air circulation device in a number of different elongated support member positions.

11. The air circulation device of Claim 10, wherein the motor is powered by 12-volt direct current.

12. (Cancelled)

13. The air circulation device of Claim 10, wherein the motor and associated motor bearings are sealed within a rigid casing.

14. The air circulation device of Claim 13, wherein the casing is sealed so as to be impermeable to liquid.

15. The air circulation device of Claim 13, wherein the casing is made of a rigid, non-corrosive material such that it is able to withstand external forces and pressures such as those exerted by the application of highly pressurized liquids.

16. The air circulation device of Claim 10, wherein the device, excluding the motor and associated casing, is made of a polymeric material.

17. (Cancelled)

18. The air circulation device of Claim 10, wherein the elongated support portion is secured into the extended position through the cooperation of a knob, disposed upon the elongated support portion, and a dimple, formed in the bottom face of the main base.

19. The air circulation device of Claim 10, wherein the housing has a thickness of about three inches.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,062	01/04/2002	Stephen A. Milks	8416-000008	5754

7590 06/02/2005

W. R. Duke Taylor  
Harness, Dickey & Pierce, P.L.C  
P.O. Box 828  
Bloomfield Hills, MI 48303

EXAMINER

FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Final OIA

Due 9-2-05

**Office Action Summary**

Application No.

10/038,062

✓WRDT

JBGS

Applicant(s)

MILKS, STEPHEN A.

Examiner

Charles G. Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5,7-11,13-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7,8,10,11,13-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 9 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3746

## **DETAILED ACTION**

This office action is in response to the amendments and remarks of April 13, 2005. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

### ***Drawings***

After consideration of the applicant's remarks relating to one of ordinary skill understanding the concept of sealing electric motors the examiner has withdrawn the drawing objection. The examiner agrees with the applicant that one of ordinary skill in the art would understand how to provide a sealed casing for an electric motor.

### ***Claim Objections***

The cancellation of claim 6 has overcome the claim objection.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 7, 8, 10, 13-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al in view of Fujisaki et al as set forth in the last office action (the action of January 13, 2005).

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Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al in view of Fujisaki et al as applied to claims 1 and 10 above, and further in view of Hung as set forth in the last office action.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al as applied to claim 10 above, and further in view of Hung as set forth in the last office action.

#### ***Allowable Subject Matter***

Claims 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed April 13, 2005 have been fully considered but they are not persuasive. The applicant makes the following arguments: that Raab et al fails to disclose a rigid housing, that Fujisaki et al's motor is a miniaturized motor used for toys, stereos equipment, etc. instead of a low profile motor, that the examiner has used hindsight to determined obviousness, that there is no motivation in either of the

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references to combine, that neither of the references discloses a sealed motor, and that Raab does not remotely speak of manually positioning the support members.

With regards to the applicant's first argument the examiner disagrees. Any electric motor casing which is supporting a fan structure, as shown in Raab et al, must be to some extent rigid. If the casing were non-rigid, as suggested by the applicant, the bearings, shafts, rotor and stators would become out of alignment during operation and would not operate properly. In either case, the applicant's argument is mute. In Raab et al the motor is generically disclosed as an "electric motor 15 for rotating the impeller" (col. 2 lines 21 and 22). One of ordinary skill in the art would understand upon reading this limitation that an electric motor must be used and would be prompted to search the prior art for an electric motor. Fujisaki et al clearly discloses a low profile electric motor having a rigid casing (note col. 2 lines 25-30). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicant's arguments that Fujisaki et al is miniaturized instead of low-profile the examiner disagrees. Low-profile refers to the "flatness" or the motor being small in thickness, in the applicant's case 1 inch. While Fujisaki et al discloses that the motor can be used in various small devices one of ordinary skill in the art would still find it clear upon reading Fujisaki et al that structure is directed to an electric motor designed to be small in size and at the same time provide a rotary drive output (see col. 1 lines

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20-25). Further Fujisaki specifically discusses flatness. The applicant's arguments with relation to the size of the devices are essentially that the generically disclosed motor of Raab et al is slightly bigger than the applicant's motor and the motor of Fujisaki et al is a little bit too small. As shown in In re Rose, 105 USPQ 237, (CCPA 1955) changes in size of an element are generally not given patentable weight or would have been obvious improvements. One of ordinary skill in the art would have found it obvious to size the Fujisaki et al electric motor so that it could provide the correct driving force needed to drive an impeller.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case (and this part of the examiner's argument also has applicability to the hindsight argument) the Raab et al reference provides a clear suggestion to combine. It discloses a "black box" electric motor. One of ordinary skill who wants to build the Raab et al fan is given no further instruction by Raab et al than use an electric motor. Thus Raab et al not only suggest that one of ordinary skill consider an electric motor to be combined with his teachings it requires that one of ordinary skill consider any electric motors available for use to provide a rotary input.

With regards to the applicant's argument that neither of the references is sealed the examiner disagrees. As noted Raab et al is a generic teaching of an electric motor. It is noted that the applicant has provided no specific teaching of how his electric motor is to be sealed or a specific structure for doing so. Additionally, the applicant has admitted that one of ordinary skill in the art would understand how to provide a sealed motor. Fujisaki et al, as noted in the previous office action, discloses a tight and sealed casing around an electric motor and a shaft. The opening for the shaft is the only opening present. This tight and extended space between the shaft and bearing forms a labyrinth seal. With regards to the applicant's arguments that the Fujisaki et al motor is not sealed the examiner disagrees. The applicant's essentially has not disclosed how he's sealing his motor and the argument amounts to an "our motor is sealed and yours is not argument". To the degree that applicant has disclosed a sealed motor the Fujisaki et al device discloses a sealed motor.

With regards to the argument that Raab et al do not disclose manually positioning the support members the examiner agrees. However, the rejection set forth that it would have been obvious to make the positioning of the Raab et al support members manual. Such a modification would reduce parts and simplify the structure. The spring biased structure of Raab et al is certainly a convenient mechanism, however, one of ordinary skill would understand that by removing the spring a possible source of wear or malfunction would be removed and a more reliable mechanism would be created.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

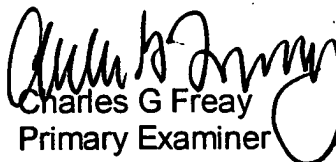
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-

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4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
May 28, 2005